



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
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Press Release

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OFFICIAL STATEMENT OF THE OFFICE OF ATTORNEY GENERAL
IN RELATION TO THE OPINION OF THE WEST VIRGINIA
SUPREME COURT OF APPEALS IN MCGRAW V. BURTON

The Supreme Court of Appeals today unanimously confirmed that the Attorney General is the State's chief legal officer, with inherent constitutional authority to represent the State in all litigation, and with the duty to insure centralized coordination of the legal policies and positions asserted by State agencies. The Court's courageous Opinion confirms the Attorney General's oft-expressed belief that the powers of government derive from the people and may be exercised only in accordance with their will. His status as an elected official thus requires him to be responsive to the interests of the people as a whole as well as the specialized interests of his agency-clients. The Court's opinion is based on these fundamental principles, and will provide guidance to those would otherwise resist the Attorney General's attempts to promote justice in a world increasingly controlled by the dollar rather than the voter.

Significantly, the Court held that the Legislature was under a duty to provide the Attorney General with sufficient funding to properly exercise these constitutional functions. This holding in itself will necessarily curtail the proliferation in the use of outside counsel and "house counsel," due to their economic inefficiency. The Court held that it had insufficient information to determine whether any of the various statutes authorizing agencies to hire their own counsel were invalid, but admonished that the employment of such attorneys could not be used in a fashion which would undermine the Attorney General's constitutional role, or deprive him of the resources needed to represent the State. Towards this end, the Court noted that the Attorney General was to appear as counsel of record for the State in all litigation, regardless of whether the agency had statutory authority to hire its own attorneys. Further, where the Attorney General desires to take a position different than his agency client, he could do so by intervening on his own behalf as a party-litigant.

By these means, the Court has insured that the Attorney General cannot be silenced through the use of other attorneys, and thus significantly reduced the incentive to hire such attorneys.

The Court observed that the many statutes authorizing agencies to use attorneys other than the attorney general were inconsistent with the general legislative policy, expressed in the West Virginia Code, that agencies not spend money on legal services not provided by the Attorney General. However, the Court stated that it expected the affected agencies, the Attorney General, and the Legislature to work towards a solution that would preserve Attorney General's central role. This will, of course, require a significant increase in the staffing of the Office of Attorney General and a corresponding reduction in the legal staff employed directly by State agencies.

To read the full text of the opinion, go to:

<http://www.state.wv.us/wvsca/docs/spring02/30094.htm>

To read the full text of Justice Albright's concurring opinion, go to:
<http://www.state.wv.us/wvsca/docs/spring02/30094c.htm>

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